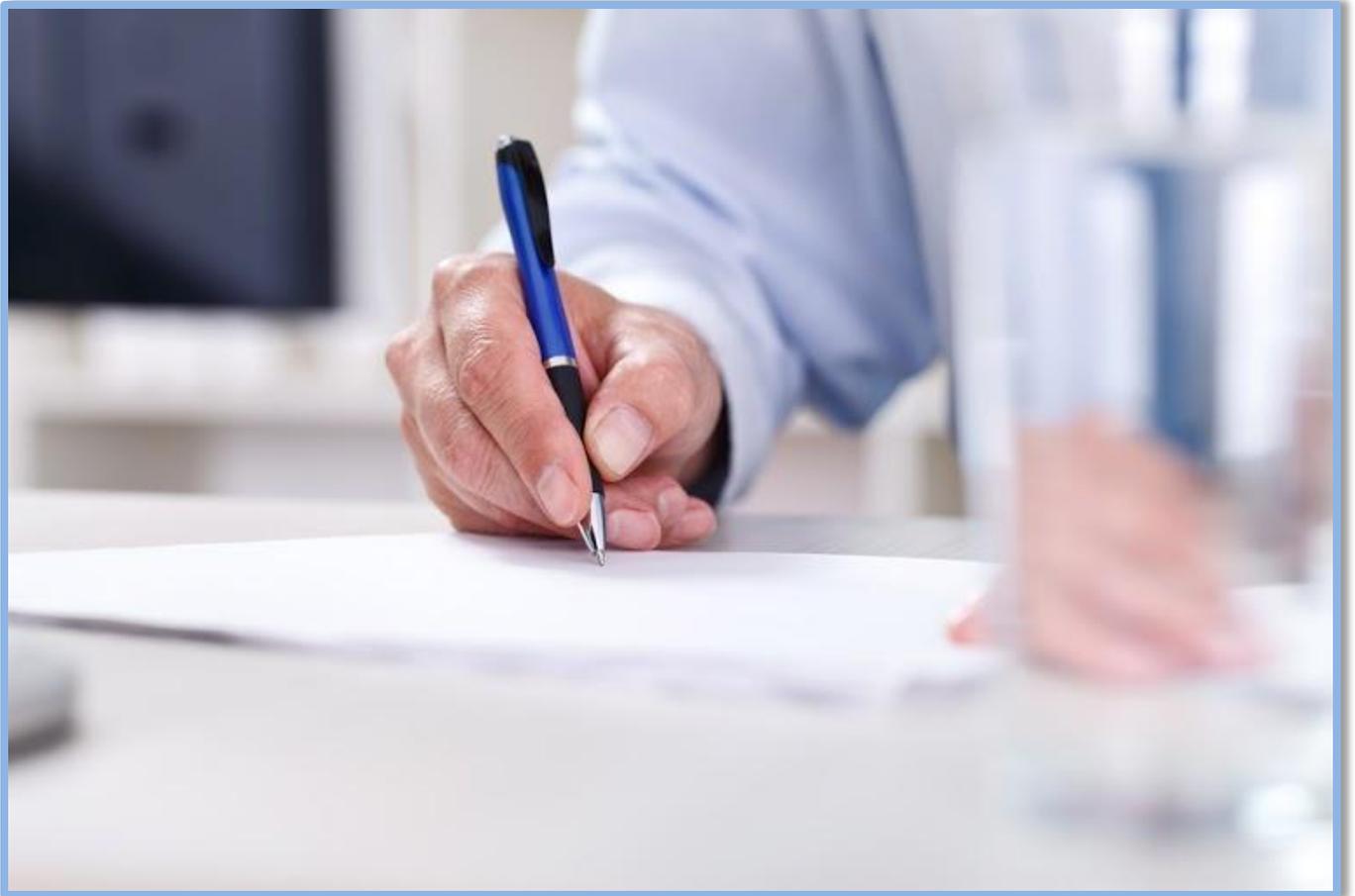


# WHAT IS THE DIFFERENCE BETWEEN A MATERIAL BREACH AND A NON-MATERIAL BREACH

*“There is a big difference between a minor oversight or a failure to fulfill a small detail of the contract versus a total failure to perform any aspect of the agreement.”*



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When parties create a contract, the agreement may contain many provisions and terms. Some contracts are incredibly detailed and provide comprehensive specifications about every aspect of the transaction that is to take place. A contract to build a complicated product, for example, may run hundreds of pages and provide information on every detail of design, construction and delivery.

Parties to a contract are bound by the terms of the agreement that they have negotiated. This means that they must comply with all of the different provisions that are contained within the contract. A failure to fulfill obligations created by the agreement is considered a breach of contract. The breaching party can be held legally liable for damages and losses that result from the failure to fulfill contractual

obligations. There may also be other remedies available to the non-breaching party who is harmed in some way by the fact that the agreement is not performed in full. While parties to a contract are expected to do what they promised, however, not all breaches of contract are the same. There is a big difference between a minor oversight or a failure to fulfill a small detail of the contract versus a total failure to perform any aspect of the agreement. A breach of contract that is a major failure to



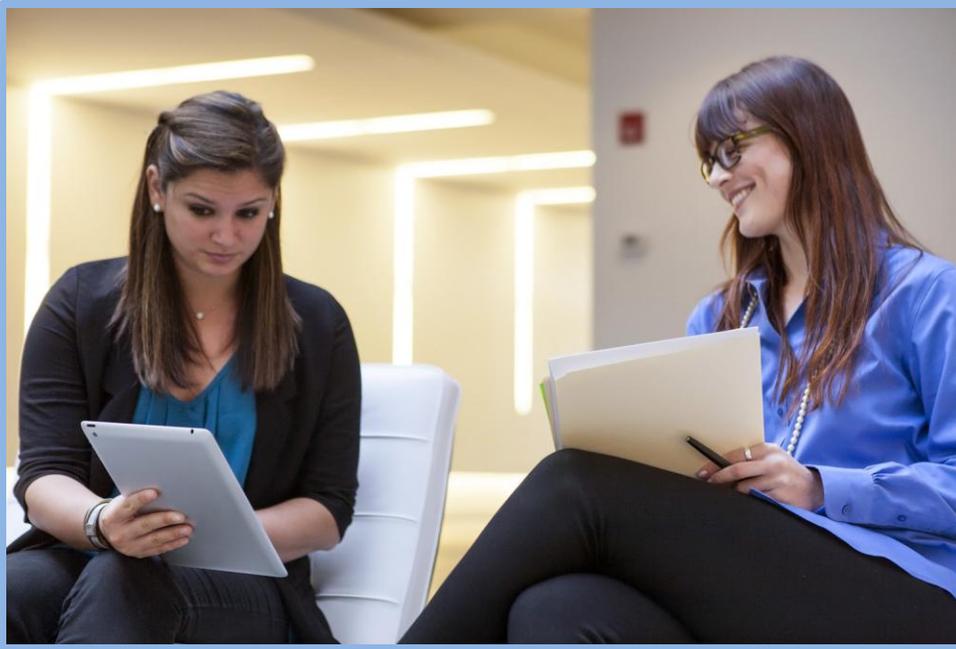
perform is considered a *material breach*. A failure to successfully complete a more minor contractual obligation may be referred to as a *non-material breach*.

In some circumstances, it is easy to determine whether a material breach or a non-

material breach occurred. In other situations, however, the question of whether one party substantially failed to perform or not becomes much more complicated and there is room for disagreement. It is imperative to speak with an experienced contract lawyer for help determining whether a material breach or a non-material breach occurred. An experienced attorney can also provide legal representation in the event that remedies must be sought to compensate for a breach.

## Understanding Material Breach vs. Non-Material Breach

A breach is said to be a material breach if the failure to perform goes to the heart of



the contractual agreement. When the purpose of the contract is not fulfilled and the contracting party does not get the product or service that he bargained and negotiated for, this is considered to

be a material breach.

A breach is a non-material breach if the failure to perform is related to a tangential aspect of the agreement, but the fundamental purpose of the contract was fulfilled.

Consider, for example, a contract to construct and install a swimming pool. The agreement may specify many different things, including the depth of the pool, the number of steps leading into the pool, the size of the pool, the tiles to be used and the color of the pool liner. The pool builder would agree to fully construct the pool according to the specifications that were included in the contract. In exchange, the property owner who contracted for the pool to be built would agree to pay a predetermined sum of money.

If the pool was never built at all, this would be an example of a material breach of contract. The purpose of the contract was to facilitate the construction of the swimming pool. If no pool is created, then the essence of the contract has not been fulfilled and a material breach has occurred.

However, if the pool was constructed but the pool builder only included one set of steps into the swimming pool instead of including



two sets of steps into the swimming pool, this would not be considered a material breach of contract. Because the property owner still has a functional and finished swimming pool, the breach is non-material. The property owner was damaged by the absence of the second set of steps, but that damage is remediable relatively easily.

In the case of a material breach, the non-breaching party has the option to decide not to perform his or her part of the contract. The property owner could, for example, decline to pay the pool builder if no pool was constructed. The non-breaching party could also seek a court order to compel performance (called specific performance) or pursue a breach of contract claim to obtain monetary damages for money lost due to the breach.

In the case of a non-material breach, a damage claim for compensation or a request for specific performance could also be pursued. However, the non-breaching party would not have the option of non-performance. For example, the owner could not withhold the entire sum of money due to the pool builder just because of unfinished steps.



An experienced breach of contract lawyer can help to determine if a breach was material and can assist in pursuing appropriate legal remedies if you believe you were party to a contract that was breached.

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